

# Additional Information on Enlarging the Scope of the Convention

The IAFCA directs that the report to Congress review additional means for enlarging the scope of the Convention or otherwise increasing its effectiveness, taking into account the views of private sector participants and representatives of nongovernmental organizations. Such additional means are to include, but not be limited to, improved record keeping provisions and the possible expansion of the applicability of the Convention to additional individuals and organizations. The IAFCA also asks that this chapter of the report assess the impact on U.S. business of Section 30A of the Securities Exchange Act of 1934 and Sections 104 and 104A of the FCPA.

## **Additional Individuals and Organizations and Other Means of Enlarging the Convention**

Chapter 6 reviewed U.S. efforts to strengthen the Convention by broadening the prohibitions. The U.S. government has focused on expanding coverage explicitly to include a prohibition of the bribery of foreign political parties, party officials and candidates for political office as in the FCPA. Failure to cover such bribes may prove to be a significant loophole, and the OECD Working Group on Bribery is currently examining these issues as it reviews the five outstanding issues on the Convention. In the context of these discussions, we also raised

informally with Working Group members the issue of payments to immediate family members.

As noted earlier in the report, however, most signatories do not support any changes in the scope of the Convention's coverage at this time. They prefer to monitor implementation of the Convention before making any decisions on amendments to the Convention. OECD ministers, at their May 1999 ministerial meeting, directed that the Working Group should continue its examination of the issues identified for further study, which include bribes to foreign political parties, party officials, and candidates for public office.

The United States has continued to press for action on these outstanding issues. Under Secretary for International Trade David Aaron, for example, personally raised these issues in bilateral meetings with counterparts at the May 1999 ministerial meeting. As a result of these and other vigorous U.S. interventions, the U.S. position calling for further study of all five issues was reflected in the ministerial communique.

After we have more experience with monitoring implementation of the Convention, we will be in a better position to assess its effectiveness in combating international bribery. In making our assessment we will continue to consult with representatives of the private sector and nongovernmental organizations to obtain their views.

## Improved Record Keeping

The provisions of Article 8 of the Convention on accounting practices are not as comprehensive as those in Section V of the 1997 Recommendation of the Council on Combating Bribery in International Business Transactions (See Appendix B). Article 8 directs signatories to take certain measures regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards to prohibit certain practices that might facilitate the bribing of foreign public officials or of hiding such bribery. The 1997 Recommendation, however, addresses a wider range of safeguards against corruption, including accounting requirements, independent external audits, and internal company controls.

The United States would like to see signatories to the Convention implement all elements of Section V of the 1997 Recommendation. OECD members had previously accepted the 1997 Recommendation and the United States will continue to encourage them to institute those practices without delay.

## Impact on U.S. Business

The U.S. government has long been aware of the problems bribery of foreign public officials poses for international business and good governance. In the 1970s, widely publicized incidents of bribery by U.S. companies damaged the reputation of U.S. businesses. It was because of such problems that the U.S. Congress enacted the FCPA to bring a halt to the bribery of foreign officials and to restore public confidence in the integrity of the American business system. Through the FCPA, the United States declared that American companies must act ethically in obtaining foreign contracts.

The FCPA's impact was widely felt. One positive effect was that the law contributed to the perception that U.S. firms operate with greater integrity in the international market. In addition, U.S. businesses were induced to compete on the strength and quality of their goods and services, which helped them to be more competitive throughout the world. But the FCPA also put U.S. firms at a disadvantage relative to their foreign competitors who were able to bribe foreign officials without fear of penalty and even benefited from being able to deduct such bribes from their taxes. This disparity was one of the reasons the U.S. government sought to convince other countries to prohibit bribes to foreign public officials and enact legislation similar to the FCPA.

In the 1998 Trade Promotion Coordinating Committee's National Export Strategy report, it was estimated that in the period 1994–98 the outcome of approximately 240 contracts valued at \$108 billion may have been affected by bribery involving foreign firms.

From May 1998 through April 1999, additional allegations of bribery were made involving fifty-five contracts worth approximately \$37 billion.

Entry into force of the Convention in February 1999 represented an important step in our goal of leveling the playing field for U.S. business in the global marketplace. We are concerned, nonetheless, that even when the Convention is fully implemented, differences in coverage between the Convention and the FCPA may result in continued advantages for foreign competitors. Of particular concern to the U.S. government are bribes offered or paid to political parties, party officials, or candidates, categories that are not explicitly covered by the Convention (See Chapter 6 on Subsequent Efforts). Our concern is that failure to prohibit the bribery of parties, party officials, and candidates may create a loophole through which bribes may be directed in the future. Although since 1977 the FCPA has prohibited such bribery and no loophole in U.S. law has existed, our experience has shown that such bribery may be effective. For example, the very first case brought under the FCPA involved a payment to a political party and party officials for the purpose of paying for the transportation from New Zealand to the Cook Islands of a sufficient number of voters to ensure the reelection of a legislative majority for the ruling political party and head of the party. Bribes to political parties, party officials, or candidates are no less pernicious than bribes to government officials.

U.S. agencies are taking a variety of measures to help U.S. business deal with the problems of international bribery. As noted elsewhere in this report, U.S. officials will be intensifying their outreach to the private sector to solicit its views on how best to implement the Convention and to share information on signatories' laws and policies regarding bribery. Special attention will be given to the needs of small and medium-size exporters, which face an especially difficult challenge in dealing with international bribery and corruption.

As part of this effort, U.S. companies of all sizes will be able to report problems with bribery directly to the Commerce Department on the Trade Complaint Hotline of the Trade Compliance Center. In addition, the Department of Justice's Foreign Corrupt Practices Act Opinion Procedure enables U.S. firms and individuals to obtain an opinion as to whether certain prospective conduct conforms to its FCPA enforcement policy. These

procedures are available to assist firms and individuals in determining whether a particular transaction falls within the purview of the law. We will continue to assess the impact of the Convention on U.S. business in determining our policies on implementation of the Convention and on efforts to strengthen its provisions.

